IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 21 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

NAVJIVAN MILLS LTD.

Appearance:
MR MIHIR H. JOSHI, instructed by
MR MANISH R BHATT for Petitioner
SERVED BY RPAD for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.
Date of decision: 27/02/97

ORAL JUDGEMENT (Per Rajesh Balia,J.)

In respect of the assessment year 1974-75, at the instance of the Commissioner of Income Tax, the following two questions of law have been referred to this Court for its opinion by the Income Tax Appellate Tribunal,

Ahmedabad Bench "B", said to be arising out of its order in Income Tax Appeal No.1939/Ahd/80.

1. "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in allowing an admissible sum of Rs. 4,46,457/- being the bonus liability for the A.Y 1970-71?"

2. "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in allowing a sum of Rs. 10,000/- in maintaining of a temple in the premises of the assessee as staff welfare expenses?"

The first question relates to allowance of Rs. 4,46,458/-, the amount of bonus actually paid to its workmen by the assessee. The bonus was paid in respect of calendar years 1970, 1971 and 1972. The Income Tax Officer disallowed the claim on account of expenditure incurred for payment of bonus, because the assessee was required to make a provision for the same in the relevant year and since the assessee follows Mercantile system of accounting and since the same was not provided for, it cannot be allowed on the basis of payment.

On appeal the appellate Assistant Commissioner by treating the entire amount of Rs. 4,46,458/- referring to bonus as liability of 1970-71, allowed the same as permissible deduction on the ground that the assessee is maintaining bonus liability account on cash basis or on actual payment basis. The Tribunal affirmed the finding of the Assistant Commissioner on this ground. As the allowance of Rs. 4,46,467/- on the basis of actual payment stems from the finding that the assessee is maintaining bonus liability account on actual payment basis, mere fact that the account generally are maintained on mercantila basis cannot result in disallowance of the claim which is otherwise admissible and has not been subjected to claim earlier when the accounts of the assessee in respect of the same are maintained on cash basis. It is permissible for an assessee to have hybrid accounting system. This alone is sufficient to justify the conclusion reached by the Tribunal. We therefore refrain from examining the issue further where even in the case of an assesse following mercantile accounting system singularly the liability of bonus in respect of particular year, which depends upon determination of allocable surplus and is known only after settlement of final accounts and statutory

adjustments thereafter is determinable only after the close of the accounting year and in such cases where provision on estimated basis is not made in the accounting period itself but claim is made only subsequently when the amount is actually finally known whether such amount can be considered for admissible deduction on the basis of system of accounting only. The question No.1 we accordingly answer in the affirmative.

So far as second question is concerned, whether in a given circumstances whether particular expenditure is for the welfare of the employees and is in the nature of expenses laid down for the purpose of business for maintaining better employer employee relations is a finding of fact and in our opinion does not appear to be a question of law. The finding of the Tribunal that the expenses incurred in maintenance of temple and organising festivals like Navratri was for the welfare of workmen and infact incurred at the instance of the employees therefor is an expenditure in the nature of employees' welfare and qualify for deduction is a finding of fact and does not call for interference.

Accordingly, both the questions are answered in the affirmative that is to say in favour of the assessee and against the revenue. No costs.
